

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

**IN RE: THE RELEASE OF  
INFORMATION RELATED TO  
THE GOOGLE ACCOUNT OF  
SUNIL WADHWANI**

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**CASE NO. 19-MC-01743**

**GJ SUBPOENA NO. 19-334/2019R15479**

**MOTION TO QUASH SUBPOENA**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

COMES NOW, Sunil Wadhwani and files this Motion to Quash the Subpoena and would respectfully show as follows:

**I. BACKGROUND**

On or about September 4, 2019, the Federal Bureau of Investigation (“FBI”) issued a subpoena upon Google LLC (“Google”), grand jury subpoena reference no. 19-334/2019R15479 (“the subpoena”)<sup>1</sup>, for the disclosure and release of information related to the Google account of Sunil Wadhwani (“Wadhwani”).

The subpoena is facially defective because the FBI is demanding an organization appear to “testify” without stating the reasons for requesting the release of Wadhwani’s information. Wadhwani is requesting that this Honorable Court quash said subpoena or, in the alternative, issue a protective order prohibiting Google from revealing or releasing any and all information related to Wadhwani’s Google account.

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<sup>1</sup> See Exhibit A, Grand Jury Subpoena 19-334/2019R15479

## II. LEGAL STANDARD

It is well-established that civil subpoenas, are subject to the prohibitions of 18 U.S.C. § 2701, et seq., Stored Communications Act ("SCA"). The SCA prohibits service providers from knowingly disclosing the contents of a user's electronic communications.

The SCA states:

"a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service." The "contents" of a "wire, oral, or electronic communication" is defined as "any information concerning the substance, purport, or meaning of that communication."

*See 18 U.S.C. § 2701, et seq.*

## III. ARGUMENT

### A. Compelling Release Of Information Related To Google Account

The subpoena cannot be enforced. This request is an unwarranted invasion of Wadhwani's privacy and is in violation of the Stored Communications Act. Furthermore, the subpoena is imposing an unnecessary burden upon Wadhwani.

WHEREFORE, PREMISES CONSIDERED, Wadhwani respectfully requests that this Court quash the subpoena issued upon Google LLC or, in the alternative, issue a protective order prohibiting Google from revealing or releasing any and all information related to Wadhwani's Google account.

Respectfully Submitted,

HUGHES ARRELL KINCHEN LLP

By: /s/ Michael J. Wynne

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ATTORNEY FOR  
SUNIL WADHWANI

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to the all counsel of record via electronic service on this 10th day of September, 2019.

/s/ Michael Wynne

Michael Wynne

**EXHIBIT A**

**United States District Court**  
 SOUTHERN DISTRICT OF TEXAS

TO: McALLEN DIVISION

Google LLC  
 Attn: Subpoena Processing  
 1600 Amphitheatre Parkway  
 Mountain View, CA 94043

**SUBPOENA TO TESTIFY  
 BEFORE GRAND JURY**

SUBPOENA FOR:

PERSON  DOCUMENTS OR OBJECT(S)



YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

<b>PLACE</b> UNITED STATES DISTRICT COURT BENTSEN TOWER 1701 W. HIGHWAY 83 McALLEN TX 78501	<b>ROOM</b> GRAND JURY ROOM 2nd Floor
	<b>DATE AND TIME</b> September 10, 2019 @ 9:00 am

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):\*

Please see subpoena attachment. Please complete the attached Business Records Affidavit.

Compliance with this subpoena may occur by mailing the requested records prior to the appearance date indicated on the face of the subpoena to [REDACTED]

Electronic production of the requested records is preferred and can be delivered to [REDACTED] If mailing hardcopies or compact discs, please send information through Federal Express (overnight) to [REDACTED] [REDACTED] can be reached directly at [REDACTED] Please do not send materials to the United States Attorney's Office.

Please do not send materials to the United States Attorney's Office. Should you have any additional questions, please contact [REDACTED]

You are not to disclose the existence of this directive. Any such disclosure would impede the investigation being conducted and thereby interfere with the enforcement of the law.

Please see additional information on reverse

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK [REDACTED] Clerk	DATE _____  08/08/19
(BY) DEPUTY CLERK 	

This subpoena is issued upon application  
 of the United States of America  
[REDACTED]

NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY  
[REDACTED]

UNITED STATES ATTORNEY 

\*If not applicable, enter "none."

To be used in lieu of AO110

FORM OBD-227  
 JAN. 86



**19-334/2019R15479  
GRAND JURY SUBPOENA ATTACHMENT**

**Google LLC**  
**Attn: Subpoena Processing**  
**1600 Amphitheatre Parkway**  
**Mountain View, CA 94043**

1. Requesting confirmation that the following email addresses are/were hosted by Google, Google Mail, and/or GMail:
  - a. [Sunil@wristwatch.com](mailto:Sunil@wristwatch.com)  

2. Requesting general information on the server communication between email exchanges at Google. Please provide records reflecting whether Google operated Gmail servers in the state of Texas between January 1, 2013 and January 1, 2019.

**General Definitions**

“Document” shall mean, without limitation, the following items, in your possession or custody, or under your control, and that are not protected by an applicable privilege, whether handwritten, printed, recorded, filmed or produced by any other mechanical, digital, or electronic process, including electronic mail, computer tapes, disks, ROM, CD-ROM, DVD, videotape, or any other storage media: communications; correspondence; agreements; receipts; financial statements; business records; expense reports; credit card statements; work-papers, telegrams; telexes, and telecopier; notes and memoranda, summaries and minutes of conferences; summaries and records of personal conversations or interviews; books, manuals, publications, brochures, and diaries; time logs, daily planners, and log books; charts; plans; diagrams and drawings; opinions and reports of consultants.

“Relating to” shall mean, without limitation, anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, concerns, or is in any manner whatsoever pertinent to that subject.

“Checking Account and Savings Account Records” shall mean, without limitation, account opening paperwork; signature cards; monthly or periodic statements of account activity; deposit tickets, deposit items, and cash-in tickets (above \$500); withdrawal slips, checks and debit memo; proof tapes for currency deposits; correspondence with account holder; and cashier’s checks, money orders, and wire transfers (above \$500).

“Loan Records” shall mean, without limitation, financial statements provided borrower, such as balance sheets, income statements, cash flow statements, accounts receivable statements, inventory statements, tax returns, and appraisals; applications for loans; collateral for loans; loan agreements, notes, and mortgage papers; signature cards, draw requests with supporting documentation; loan advances and/or proceed checks; loan payment ledgers; verification (or attempts to verify) statements provided by borrower; monthly or periodic statements of account

activity; bank checks paid to customer to return excess interest or principal paid; records showing the source of payments on loans; inspection and/or audit reports, correspondence with borrower, reports of meetings or conversations with borrower; and Uniform Commercial Code (UCC) filings.

“Certificate of Deposit Records” shall mean, without limitation, signature cards; monthly or periodic statements of account activity; deposit tickets, credit memo, cash-in tickets, proof tape showing source of deposit; cashier’s checks, money orders, cash-out tickets showing disposition of certificates of deposit; and documents showing interest paid.

“Credit Card Records” shall mean, without limitation, account opening paperwork; signature cards; monthly or periodic statements of account activity; balance transfers from other accounts; and correspondence with account holder.

“Internal Investigation Records” shall mean, without limitation, notes of interviews, recordings of interviews, reports of interviews, analysis done related to the investigation, any written statements provided, documents related to the internal investigation; and any findings of the internal investigation.

### **INSTRUCTIONS FOR PRODUCTION OF RECORDS**

#### I. General

- A. Records existing as **Electronically Stored Information (ESI)** shall be produced in electronic form and shall include text data and image data held:
  - 1. In your record retention systems; and/or
  - 2. By your technology, data, or other service provider(s).
- B. Records that do not exist as ESI may be produced in paper or other original format and may be converted to image or text data and provided as ESI, unless originals are required.

#### II. Text Data

- A. Text data relating to transactions shall be produced within a data file:
  - 1. Using a delimited ASCII text data format; or
  - 2. Using software that can export to a commonly readable, non-proprietary file format without loss of data.
- B. Text data files relating to transactions shall include field descriptions (e.g., account number, date/time, description, payee/payor, check number, item identifier, and amount).

#### III. Image Data

- A. Image data shall be produced in graphic data files in a commonly readable, non-proprietary format with the highest image quality maintained.

- B. Image data of items associated with transactions (e.g., checks and deposit slips) shall be:
  - 1. Produced in individual graphic data files with any associated endorsements; and
  - 2. Linked to corresponding text data by a unique identifier.

IV. Encryption/Authentication

- A. ESI may be transmitted in an encrypted container. Decryption keys and/or passwords shall be produced separately at the time the data are produced.
- B. Authentication, such as hash coding, may be set by agreement.
- C. Affidavits or certificates of authenticity may be included as part of the electronic production.

**Compliance with this subpoena may occur by mailing the requested records prior to the appearance date indicated on the face of the subpoena to [REDACTED]**

[REDACTED]

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